BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TOM M. SOEHN	)	
Claimant	)	
VS.	)	
	)	Docket No. 192,247
WICHITA WINGS, L.P.	)	
Respondent	)	
AND	)	
	)	
CIGNA PROPERTY & CASUALTY	)	
Insurance Carrier	)	

ORDER

On October 9, 1996, the application of respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark dated April 30, 1996, came regularly on for oral argument in Wichita, Kansas.

APPEARANCES

Claimant appeared by and through his attorney, Randall J. Price of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Christopher McCurdy appearing for Douglas C. Hobbs of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The records and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

(1) Whether claimant filed application with the office of the Director of Workmens Compensation within the time limits set forth in K.S.A. 44-534(b).

(2) Whether claimant filed written claim as is required by K.S.A. 44-520a.

(3) The nature and extent of claimant's injury and/or disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law.

Claimant, a professional soccer player, was injured on December 1, 1990, while playing for the respondent. Written claim was received, per the testimony of Sandra L. Miller, an employee for the insurance company for respondent, on December 11, 1990. K.S.A. 44-520a (Ensley) states in part:

> "(a) No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation . . . ."

Having acknowledged the receipt of written claim on December 11, 1990, it is found that timely written claim was made within 200 days of claimant's December 1, 1990, injury.

Respondent next contends that claimant has failed to satisfy the requirements of K.S.A. 44-534 (Ensley) which states in part:

> "(b) No proceeding for compensation shall be maintained under the workmen's compensation act unless an application for a hearing is on file in the office of the director within three (3) years of the date of the accident or within two (2) years of the date of the last payment of compensation, whichever is later."

It is acknowledged by the parties that claimant's E-1 was filed in the office of the Workmens Compensation Director on June 23, 1994. In order to satisfy the requirements of K.S.A. 44-534 (Ensley) claimant must have received medical treatment or some type of compensation subsequent to June 23, 1992. Claimant was referred for authorized treatment to several doctors including Dr. Charles Henning, the Wichita Wings team physician, Dr. William Clancy of Birmingham, Alabama, who performed surgery upon claimant's right knee, and Dr. Bradley W. Bruner, who performed a physical examination upon claimant in April 1992, and provided an impairment rating to claimant of 12 percent to claimant's lower left extremity. Respondent contends Dr. Bruner was claimant's last authorized treating physician and his treatment was paid for on April 24, 1992. If this were true, this would cause claimant's Form E-1 filed on June 21, 1994, to be untimely pursuant to K.S.A. 1990 Supp. 44-534.

During the summer of 1992, following the completion of the Wichita Wings season, claimant played for the Colorado Foxes. At that time claimant sought treatment from Dr. Robert Loeffler, the team physician for the Colorado Foxes. Claimant advised Sandra L. Miller, senior claims representative for the respondent's insurance company, of his intention to seek a second opinion. Claimant testified that during the entire series of treatments provided on his knee he was at no time advised that the ongoing treatment was de-authorized by respondent or its representative. Claimant testified to informing Ms. Miller of his treatment with Dr. Loeffler and also of an MRI performed by Dr. Andrew Parker, the team physician for the Denver Thunder, with this MRI being completed in December 1992. Claimant also testified that a copy of this MRI was forwarded to Ms. Miller. Claimant at no time was provided with any medical bills for the treatment by Dr. Loeffler or the MRI performed by Dr. Parker. He testified that he understood the treatment performed by Dr. Loeffler would be paid by the Colorado Foxes, as he was that team's physician. He did opine that he forwarded a copy of the MRI report to Ms. Miller with the intention that it be paid for as part of the ongoing, authorized treatment. The MRI was performed in December 1992 for two purposes. Claimant first intended to utilize the MRI in deciding what, if any, additional medical treatment he may encounter in the future. Claimant also intended to use the MRI and the opinion from Dr. Loeffler to decide whether he should settle this claim with respondent and whether additional settlement monies were necessary in order to cover the possibility of future medical treatment. Claimant had been in an ongoing discussion with Ms. Miller regarding the possibility of settling this case and, on more than one occasion, had asserted a need for possible future medical treatment.

Ms. Miller testified in this matter alleging that on two separate occasions she advised claimant that the authorized treatment for his knee injury was discontinued and any additional treatment in the future would have to be claimant's own responsibility. Ms. Miller alleged these conversations took place on June 8, 1992, and again on August 5, 1992. A review of the notes maintained by Ms. Miller failed to uncover any mention in her records of the conversation regarding the termination of claimant's authorized medical treatment. Ms. Miller has been with CIGNA for 15 years. During the last eight years she has been senior claims representative in the workmens compensation department. Respondent

employed Ms. Miller to manage the file, conduct initial investigation of the alleged claims, and make decisions regarding what, if any, medical treatment or temporary benefits might be due to the claimant. Ms. Miller was also in charge of deciding and authorizing the course of treatment for claimant's knee injury. A review of Ms. Miller's background and training would indicate she should understand the significance of authorized versus unauthorized treatment.

Respondent's contention that claimant's authorized treatment was terminated is not supported by respondent's medical evidence. The April 13, 1992, report of Dr. Bruner indicates claimant had ongoing tenderness, some persistent tendonitis and occasional swelling in the knees. While he did give claimant a functional impairment rating, he does not specifically terminate the ongoing medical care of claimant, nor does he indicate claimant is in need of no additional medical care. There is no indication in Dr. Bruner's medical records that claimant was advised that ongoing medical care was terminated.

The Kansas Supreme Court has stated that :

> "[I]t is well established that 'The furnishing of medical aid to an injured employee constitutes the payment of compensation so that a claim filed within due time of the date when the last medical aid was furnished claimant by respondent was filed in time.'" Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973).

In this instance if claimant is able to establish that he was furnished medical care within the two-year period prior to June 23, 1994, when his Application for Hearing was filed, then his Application for Hearing would be timely under K.S.A. 44-534 (Ensley). Medical treatment with Dr. Loeffler and the MRI performed by Dr. Parker, while not specifically authorized by respondent, nevertheless were performed either with respondent's knowledge or with the resulting tests being provided to respondent's representatives shortly after the tests. No documentation exists to verify that claimant was advised his medical treatment was terminated. In fact, considering the experience and training of Ms. Miller, the lack of comment in the documentation and records provided by respondent is an indication that claimant was not advised that the authorized treatment was being discontinued. When a respondent is "on notice that the workman is seeking additional treatment on the assumption that he is still covered they are under a positive duty to disabuse him of that assumption . . . ." Blake, 213 Kan at 515.

Therefore, the Appeals Board finds that claimant's Application for Hearing filed June 21, 1994, has fulfilled the statutory requirements of K.S.A. 44-534 (Ensley) and, therefore, is timely.

In reviewing the evidence dealing with the nature and extent of claimant's injury and/or disability, the Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to

repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the nature and extent of claimant's injury and/or disability. In finding that claimant is entitled to a 20 percent impairment of function to his left leg the Appeals Board relies upon the evidence of Dr. Bruner and Dr. P. Brent Koprivica. While it is true that Dr. Koprivica was not the treating physician and Dr. Bruner was considered the treating physician, it is noted that Dr. Bruner, was a short-term treating physician utilized for the intent of providing claimant an impairment rating and recommendations for additional treatment.

It should also be noted that while claimant argues Dr. Bruner's opinion should be disregarded because he did not use the AMA Guides to the Evaluation of Permanent Impairment, Third Edition Revised, claimant's date of injury is in 1990. In 1990 there was no statutory requirement that the AMA Guides be utilized.

In awarding claimant a 20 percent functional impairment to his left leg, the Appeals Board affirms the Award of the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated April 30, 1996, should be, and hereby is, affirmed in all respects.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the favor of the claimant, Tom M. Soehn and against the respondent Wichita Wings, L.P., and its insurance carrier, CIGNA Property & Casualty, for an accidental injury sustained on December 1, 1990. Claimant is awarded 41 weeks of temporary total disability compensation at the rate of $278 per week or $11,398, followed by 31.8 weeks permanent partial functional impairment compensation at the rate of $278 per week or $8,840.40, for a 20% permanent partial scheduled injury to the left leg, making a total award of $20,238.40. As of the date of this Order the entire amount is due and owing in one lump sum minus any amounts previously paid.

Claimant is further entitled to all outstanding medical care, unauthorized medical care up to the statutory limit, and future medical care upon proper application to and approval of the Director per the Award of the Administrative Law Judge.

The fees necessary to defray the expense of administration of the Kansas Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows.

Court Reporting Service	
Deposition of Bradley Bruner, M.D.	$ 82.10
William V. Denton & Associates	
Deposition of P. Brent Koprivica	Unknown
Barber & Associates	
Deposition of Tom M. Soehn	Unknown
Transcript of Regular Hearing	$ 60.30
AAA Reporting Company	
Deposition of Sandra L. Miller	$266.80

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randall J. Price, Wichita, KS
Douglas C. Hobbs, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director